

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

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**Rachel Marschner,  
A.S.,**

Plaintiffs,

v.

**Sheldon Mark Sacher,**

Defendant.

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**Civil No. 06-460 (PJS/JJG)**

**REPORT  
AND  
RECOMMENDATION**

JEANNE J. GRAHAM, United States Magistrate Judge

This litigation returned to the undersigned on November 12, 2008 on defendant Sheldon Sacher's motion to dismiss, or in the alternative, for summary judgment (Doc. No. 121). Lisa M. Elliott, Esq., appeared for Mr. Sacher. Plaintiffs did not appear, either personally or through counsel. The motion is referred for a report and recommendation in accordance with 28 U.S.C. § 636 and Local Rule 72.1(b).

Mr. Sacher is the sole remaining defendant in this litigation, and the plaintiffs have one surviving claim against him. Mr. Sacher first noticed his current motion for hearing before this Court on August 20, 2008. The plaintiffs did not appear at that hearing. In the ensuing report of September 9, 2008, this Court recommended that the motion be granted; that the sole remaining claim be dismissed with prejudice; and that this litigation be closed. Because the plaintiffs did not timely object to this report, Judge Patrick J. Schiltz adopted it in an order on September 25, 2008, and judgment was entered.

Through filings on October 1, 2008, plaintiff Rachel Marschner advised that she was not aware Mr. Sacher's motion was going to be heard, thus denying her an opportunity to respond to

the motion. To mitigate potential prejudice to Ms. Marschner, Judge Schiltz issued an order on October 6, 2008, vacating the September 25 judgment and reopening this litigation.

In accordance with Judge Schiltz' order, this Court issued an order on October 7, 2008, scheduling another hearing on Mr. Sacher's motion for November 12, 2008. To ensure that Ms. Marschner had due notice of the hearing, the order was mailed to her, at her address of record, by certified U.S. Mail. The record shows that the October 7 order was delivered to Ms. Marschner's address on October 14, 2008.

Ms. Marscher did not submit any supplemental briefing regarding Mr. Sacher's motion, nor did she appear at the November 12 hearing.

Since this Court issued the September 9 report and recommendation, the only additional submissions from Ms. Marschner are her filings from October 1, 2008. But none of these papers discuss Mr. Sacher's motion on its merits. As a result, there is nothing in the record that alters the reasoning or conclusions in the September 9 report. This Court, therefore, has no reason to depart from its prior recommendation, which is hereby incorporated by reference.

Being duly advised of all the files, records, and proceedings herein, **IT IS HEREBY RECOMMENDED THAT:**

1. Sacher's motion to dismiss, or in the alternative, for summary judgment (Doc. No. 121) be **GRANTED**.
2. The remaining claim in this litigation be **DISMISSED WITH PREJUDICE**.
3. This litigation be closed and judgment entered.

Dated this 11th day of December, 2008.

*s/ Jeanne J. Graham*  
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JEANNE J. GRAHAM  
United States Magistrate Judge

### NOTICE

Pursuant to Local Rule 72.2(b), any party may object to this report and recommendation by filing and serving specific, written objections by **December 29, 2008**. A party may respond to the objections within ten days after service thereof. Any objections or responses filed under this rule shall not exceed 3,500 words. The district court judge shall make a de novo determination of those portions to which objection is made. Failure to comply with this procedure shall forfeit review in the United States Court of Appeals for the Eighth Circuit. Unless the parties are prepared to stipulate that the District Court is not required by 28 U.S.C. § 636 to review a transcript of the hearing in order to resolve objections made to this report and recommendation, the party making the objections shall timely order and cause to be filed within ten days a complete transcript of the hearing.